Ladang Tai Tak (KT) Sdn Bhd v Suppiah a/l Andy Thavar & Ors

HIGH COURT (JOHOR BAHRU) — CIVIL SUIT NO 22-151-1998
ABDUL MALIK ISHAK J
12 FEBRUARY 1999

Tort *— Trespass to land — Gratuitous licensee — Licence terminable at will — Declaration for structure to be illegal — Order to restrain from entering the land — Defence of estoppel raised*

The plaintiff was, at all material times, a registered owner of the land in question and operated the land as an oil palm estate. The defendants were committee members of an Indian temple which was erected on the land. The plaintiff applied for a declaration that the defendants' temple structure was illegal and sought for an order to demolish the structure and an injunction to restrain the defendants, their families, servants, agents and/or any other person acting for the defendants from entering the land or interfere with the plaintiff's rights as owner of the land.

Held, allowing the application:

The defendants were clearly trespassing on the plaintiff's land. The defendants were merely gratuitous licensees and such licence was terminable at will (see p 274I). Estoppel was not applicable for the defendants as there was no inducement or encouragement by the plaintiff to lead the defendants to expend any money on the temple (see p 273B–C).

[Bahasa Malysia summary

Plaintif, pada masa yang berkenaan, adalah tuan punya berdaftar tanah tersebut dan menggunakannya sebagai sebuah ladang kelapa sawit. Defendan-defendan adalah ahli jawatankuasa kuil India yang telah didirikan di atas tanah tersebut. Plaintif telah memohon satu perisytiharan bahawa kuil defendan adalah bangunan haram dan meminta satu perintah untuk merobohkan bangunan tersebut dan injunksi untuk menghalang defendan-defendan, keluarga, orang suruhan, ejen mereka dan/atau sesiapa sahaja yang mewakili defendan-defendan dari memasuki tanah tersebut atau mengganggu hak plaintif sebagai tuan punya tanah tersebut.

Diputuskan, membenarkan permohonan:

Defendan-defendan dengan jelas telah menceroboh tanah plaintif. Defendan-defendan hanyalah pemegang lesen ganjaran dan lesen sedemikian boleh dibatalkan bila-bila masa (lihat ms 274I). Estopel tidak boleh dipakai oleh defendan kerana tidak terdapat sebarang dorongan atau galakan oleh plaintif yang mengarahkan defendan untuk membelanjakan wang bagi kuil tersebut (lihat ms 273B–C).]

Notes

For a case on gratuitous licensee, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) para 955.

Cases referred to

B Raghunandan Saran v Smt Kanta Devi & Anor AIR 1975 All 130 (refd)
Bonner v Great Western Railway Co (1883) 24 Ch D 1 (refd)
Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd [1995] 3 MLJ 331 (refd)
Chor Phaik Har & Ors v Choong Lye Hock Estates Sdn Bhd [1996] 2 MLJ 206 (refd)
Daniel v Ferguson [1891] 2 Ch 27 (refd)
Datuk Syed Kechik bin Syed Mohamed v Government of Malaysia & Anor [1979] 2 MLJ 101 (refd)
Dewan Singh v M Thynappa Ltd & Yeo [1939] MLJ 278 (refd)
Guaranty Trust Co of New York v Hannay & Co [1915] 2 KB 536 (refd)
Haji Hussin bin Haji Ali & Ors v Datuk Haji Mohammed bin Yaacob & Ors and connected cases [1983] 2 MLJ 227 (refd)
Hanson v Radcliffe Urban District Council [1922] 2 Ch 490 (refd)
Ikebife Ibeneweka & Ors v Peter Egbuna & Anor [1964] 1 WLR 219 (refd)
Jackson v Normanby Bank Co [1899] 1 Ch 438 (refd)
John Trenberth Ltd v National Westminster Bank Ltd (1979) Sol Jo 388 (refd)
Karpal Singh v sultan of Selangor [1988] 1 MLJ 64 (refd)
Karuppannan v Balakrishnen (Chong Lee Chin & Ors, third parties) [1994] 3 MLJ 584 (refd)
Krishna Kali Mullick v Babulal Shaw & Ors AIR 1965 Cal 148 (refd)
Land Executive Committee of Federal Territory v Syarikat Harper Gilfillan Bhd [1981] 1 MLJ 234 (refd)
Lim Cho Hock v Government of the State of Perak & Ors[1980] 2 MLJ 148 (refd)
Luganda v Service Hotels Ltd [1969] 2 Ch 209 (refd)
Petaling Tin Bhd v Lee Kian Chan & Ors [1994] 1 MLJ 657 (refd)
Petronas Dagangan Sdn Bhd v Omar bin Abdul Samad [1996] 4 MLJ 391 (refd)
Rosman bin Haji Abdul Rashid v Rosmah Begum bte Bahadur Beg [1993] 2 MLJ 196 (refd)
Shaik Alauddin v Kamrutheen all K Dawood [1988] 3 MLJ 336 (refd)
Sia Siew Hong & Ors v Lim Gim Chian & Anor [1995] 3 MLJ 141 (distd)
Solomons v R Gertzenstein Ltd & Ors [1954] 2 QB 243 (refd)
Strelley v Pearson (1880) 15 Ch D 113 (refd)
Sungai Wang Estate v Uni [1975] 1 MLJ 136 (refd)

Tan Keat Seng Kitson v Kerajaan Malaysia [1996] 1 MLJ 454 (refd)
Tan Sri Haji Othman Saat v Mohamed bin Ismail [1982] 2 MLJ 177 (refd)
Teh Poh Wah v Seremban Securities Sdn Bhd [1996] 1 MLJ 701 (distd)
Tengku Mariam bte Tengku Sri Wa Raja & Anor v Commissioner for Religious Affairs, Terengganu & Ors [1969] 1 MLJ 110 (refd)
Thomas M Heysek & Anor v Boyden World Corp [1989] 1 MLJ 219 (refd)
Thompson v Park [1944] 1 KB 408 (refd)
Wee Kang Whye & Anor v Lee Woon Tong [1974] 1 MLJ 7 (refd)
WJ Alan & Co Ltd v El Nasr Export and Import Co [1972] 2 QB 189 (refd)
Yong Tong Hong v Siew Soon Wah & Ors [1971] 2 MLJ 105 (distd)

Legislation referred to

Perbadanan Kemajuan Filem Malaysia (Licensing) Regulations 1983 reg 2
Perbadanan Kemajuan Filem Nasional Malaysia Act 1981 ss 22(1), 25
Rules of the High Court 1980 O 15 r 16
Specific Relief Act 1950 ss 41, 51(2), 52(1), 53
Specific Relief Act 1877 s 38(1) [Ind]
Street, Drainage and Building Act 1974 s 72(1)(b), 72(4), 72(5)

Nora SW Lam (*Nora SW Lam & Assoc*) for the plaintiff
Vijayaletchumi Gopal (*Vijaya Gopal & Assoc*) for the defendants

Abdul Malik Ishak J: By way of an inter partes summons-in-chambers in encl 10, the plaintiff sought for the following reliefs:

(1) a declaration that the defendants' temple structure is illegal;

(2) an order that the defendants, their servants, agents and/or any other person acting for the defendants, remove, demolish and/or tear down the temple structure and all other illegal structures connected therewith on the plaintiff's land or any part thereof held under CT 618 Lot 2138 Mukim Kota Tinggi, Johor Darul Tak'zim ('the land') immediately and thereafter to deliver vacant possession of the said site and the said land forthwith;

(3) an order that in the event the defendants, their servants, agents and/or any other person acting for the defendants fail to comply with the order of this honourable court to remove, demolish and/or tear down the temple structure and all other illegal structures connected therewith as aforesaid, within 14 days from date of the order, then the plaintiff, its agents and/or servants shall be entitled, on their own accord to demolish the structure aforesaid, and in this event, the plaintiff is entitled to the costs incurred therein to be paid by the defendants by way of an assessment by the senior assistant registrar ('the SAR');

(4) an order that the defendants, their families, servants, agents and/or invitees be forthwith restrained by injunction from entering, visiting and/or trespassing on the said land;

(5) an order that the defendants, their servants, agent and/or any other person acting for the defendants remove all their things including the 'deities', statues, altars and all debris from the said site and the said land forthwith; A

(6) an order that the defendants be restrained from acting or taking any steps to interfere with the plaintiff's rights as owner of the said land and site in particular from preventing or disrupting the plaintiff's daily operations and business; B

(7) costs; and

(8) any other relief that this honourable court deems fit and just.

The facts as gleaned from the several affidavits may be stated as follows. C
The plaintiff, at all matertial times, is the registered proprietor of the land in question and they operate and continue to operate an oil palm estate known as Ladang Tai Tak since the early 1970's on a large scale basis. The defendants, on the other hand, are committee members of an Indian temple known as Sri Sakthi Migu Thurgaiamman that was constituted on 27 August 1992. Presently the defendants' temple is sited on a portion of D
the oil palm estate with an approximate size of 42,408 square feet. The survey plans marked as exhs 'LTT-7A' and 'LTT-78' of encl 9 (the affidavit of Mr Lee Beng Huat that was affirmed on 27 July 1998 and filed on 5 August 1998 and in support of encl 10) make for interesting reading as it shows the magnitude and size of the Indian temple. It was said that the plaintiff did not at any material time consent to the expansion of the temple E
site which was originally a mere statue of a deity on a tree stump. Some workers were said to have prayed there for 4-digit winning lottery numbers. When the defendants continued to expand the site of the temple, Mr Mohamed bin Malek, the assistant manager of the plaintiff's estate, warned the fifth defendant one Krishnan a/l Veerapan ('Krishnan') by letter F
that the temple committee was responsible for the construction of the temple at the estate where such construction was not approved by the plaintiff. That letter was dated 24 March 1987. In that letter, Mr Mohamed bin Malek also advised the defendants not to expand beyond an area of 150 feet by 90 feet. Mr Mohamed bin Malek too in that letter and on behalf of the plaintiff, absolved the latter from any liability that might arise G
thereunder. That letter was also extended to the Registrar of Societies and it was worded in Bahasa Malaysia in the following manner:

Ladang Tai Tak (Kota Tinggi) Sdn Bhd
21/22 Miles, Jalan Kota Tinggi, Johor.
Tel:891339
P.O. Box 509, Kota Tinggi, Johor H

Our Ref :

Your Ref: Date: 24 March 1987

Kepada, I
Pengerusi Kuil Kaliamah
d/a Ladang Tai Tak
Kota Tinggi. Johor. (UP En Krishnan Veerappan)

Per: Kuil Kaliamah

Merujuk perkara di atas. adalah dimaklumkan iaitu sebagaimana yang diketahui. anda adalah orang yang bertanggungjawab atas pembinaan kuil tersebut di kawasan ladang yang mana pembinaannya tidak mendapat pengiktirafan dari pihak majikan.

Oleh kerana kuil tersebut telah dibina dikawasan ladang dengan itu pihak majikan terpaksa mengarahkan agar pembinaan dikawasan kuil tersebut tidak diperluaskan lagi dari apa yang telah ada sekarang iaitu luasnya 150' dan 90'. pihak majikan juga tidak akan bertanggungjawab atas apa jua kesulitan yang berlaku di atas/dalam kawasan kuil tersebut.

Pihak majikan akan mengambil tindakan sewajarnya jika arahan seperti di atas tidak dipatuhi.

Sekian, harap maklum.

Yang benar,
Ladang Tai Tak (Kota Tinggi) Sdn Bhd

Sgd (Illegible)

.....
(Mohamed bin Malek)
b/p Pengurus,
Penolong Pengurus,
Ladang Tai Tak.

mbm/mne

Salinan Diakui Sah

Sgd (Illegible)
Lim Jit Ngoh
Penolong Pendaftar Pertubuhan,
Johor

Surprisingly on 24 January 1989 the temple site was raided by officers from FINAS (Perbadanan Kemajuan Filem Malaysia) and the offshoot of that raid saw Krishnan being charged in the magistrates' court for an offence under s 22(1) of the Perbadanan Kemajuan Filem Nasional Malaysia Act 1981 and punishable under s 25 of the same Act. The charge was worded as follows:

> That you on 24 January 1989, at about 4 pm at premises No 4, Block 22, Ladang Tai Tak, Kota Tinggi, in the district of Kota Tinggi in the State of Johor Darul Takzim, without holding a valid licence under regulation 2 of the Perbadanan Kemajuan Filem Nasional Malaysia (Licensing) Regulations 1983 did engage in the films distribution and that you have thereby committed an offence under s 22(1) of the Perbadanan Kemajuan Filem Nasional Malaysia Act 1981 and punishable under s 25 of the said Act.

And it was obvious that Krishnan was charged for engaging in film distribution without holding a valid licence under regulation 2 of the Perbadanan Kemajuan Filem Malaysia (Licensing) Regulations 1983. Krishnan pleaded guilty and he was convicted on 17 March 1990. The magistrates' court fined Krishnan in the sum of RM6,000 in default three

months' imprisonment. The fine was paid on 17 March 1990. The facts as adduced before the learned magistrate in regard to that charge showed that the temple was used as a front and the self-styling priest in the person of Krishnan was nothing more than a guise to camouflage the nefarious illegal activities of the defendants. The raid conducted by FINAS on the temple site yielded 200 pirated video tapes and 20 pornographic video tapes and other illegal items. Mr Lee Beng Huat ('Mr Lee') was appointed as the chief manager of the plaintiff's estate on or about 1990 and he visited the site of the temple several times and he informed the defendants that he wanted to utilise the site for planting crops and that he did not want the worshippers to trespass and spoil the crops. In due course, Mr Lee caused a fence to be built. The defendants admitted in their affidavits that the plaintiff had raised objections to the temple structures. When the defendants attempted to reconstruct the previous temple structures which were damaged and sinking in 1993, Mr Lee took appropriate actions and halted the contractor's works and workers from entering or bringing equipments into the oil palm estate. This was never denied by the defendants in their affidavits. Mr Lee took a stiff stand and refused to discuss matters and in fact asked Krishnan to see the plaintiff's solicitors in regard to the issue at hand. It would be apparent and this was admitted by the defendants that from the time Mr Lee took command of the oil palm estate his stand was quite explicit in that he had asked Krishnan to demolish the temple. Of pertinence to note would be the fact that the structures erected by the defendants at the temple site were not based on plans approved by the local authorities and, surprisingly, the defendants admitted that this was so. Consequently, the building of the temple structures were haphazard and done according to the whims and fancies of the defendants. The temple structures currently stand at 50 feet high with about 100 deities. In short, the defendants' total disregard of the law and violation of the plaintiff's rights have been amply set out in the affidavits of Mr Lee in encls 9 and 16 and the same were admitted by the defendants. The affidavit of Krishnan in encl 14 that was affirmed on 2 September 1998 and filed on the same date makes for interesting reading. Krishnan deposed to the following effect:

(1) Initially there was only one tree and the rest of the trees were cleared. After the discussions the contractor told the deponent that he would put up a small hut on the top portion where there were statues in order to pray. As agreed the deponent said that the contractor then built a small hut.

(2) The monies received from the devotees were used to build a small temple.

(3) The defendants proceeded to register their society in 1992. It seemed that a Chinese contractor proposed to the deponent to build a temple in place of the hut. Offers of donations poured in. The amount came to RM20,000. The defendants became excited and decided to build a concrete temple.

(4) Foreign experts came into the picture. It seemed that a Filipino was assigned to sketch the plan and a draughtsman from a Singapore temple also assisted. The defendants acted as though the land wherein the site of the temple was located belonged to them. The defendants simply bulldozed through and they saw it fit not to ask the plaintiff or the authorities for consent or approvals for the plans and the proposed structures.

(5) It was deposed that the deponent built a small house, more in the nature of a small building for the kitchen and the banquet hall. It was also deposed that Mr Mohamed bin Malek agreed to this proposition. But, with respect, I must at once say that such an allegation cannot be true bearing in mind the warning letter that emanated from Mr Mohamed bin Malek himself dated 24 March 1987 which had been produced earlier.

The plaintiff's stand was quite simple and straightforward. The structures that stood on the temple site were built without the approval of the relevant authorities and for all intents and purposes remained illegal. Obviously those structures posed a danger and hazard to the occupiers, invitees and the public generally that utilised the temple. The defendants admitted the same to be correct. That the defendants had taken the law into their own hands can be seen when Krishnan deposed in para 4.25 of encl 14 to the following effect:

> Sometime in the year 1993 one of the buildings within the temple area started to sink to one side. As it was dangerous to the devotees the committee members and I have decided to pull it down and reconstruct the same.

The authorities were not too pleased with the temple that was built on the plaintiff's land and by a written notice the plaintiff was ordered to demolish all the structures that formed part and parcel of the temple. That written notice emanated from the Pejabat Majiis Daerah Kota Tinggi and it was worded as follows:

> Pejabat Majlis Daerah Kota Tinggi,
> Jalan Padang,
> 81900 Kota Tinggi,
> Johor, Malaysia.
>
> Telefon: 8834559 – Yang Dipertua
> 8831129 – Setiausaha
> 8831004/8834558 – Pejabat Am
> Telefax: 8834015
>
> Ruj Kami: MDKT/AM/15 — (250)
>
> Akta 133
> Akta Jalan, Parit dan Bangunan 1974
> Notis Amaran
>
> Pengurus,
> Ladang Tai Tak Sdn Bhd,
> Jalan Kota Tinggi/Johor,
> 81900 Kota Tinggi.

Adalah didapati bahawa tuan telah bertanggungjawab di atas pembinaan tanpa kebenaran bertulis daripada Yang Dipertua Majlis Daerah Kota Tinggi iaitu:-

Pembinaan sebuah kuil di atas sebahagian tanah Ladang Tai Tak, Jalan Johor, Kota Tinggi.

2 Oleh yang demikian tuan telah didapati melakukan kesalahan di bawah Akta 133 (Akta Jalan, Parit dan Bangunan 1984) Bhg V s 70 (13)(c) dan boleh dihukum di bawah seksyen yang sama (di dalam) Akta tersebut.

3 Tuan/puan dengan ini dikehendaki:

3.1 Merobohkan binaan tersebut dengan serta merta setelah menerima notis ini.

4 Jika tuan/puan didapati engkar mematuhi arahan ini dalam masa yang ditetapkan, tindakan yang lebih tegas akan diambil oleh Majlis ini mengikut peruntukan undang-undang yang ada.

Bertarikh pada 29 Mac 1995.

Sgd (Illegible)
(Hj Zabna bin Umar)
Yang Dipertua,
Majlis Daerah Kota Tinggi,

HEAB/hs

The written notification alerted the plaintiff of an offence under s 72 (1)(b) of the Street, Drainage and Building Act 1974 and required the plaintiff to demolish the 'unauthorized building' in the form of the temple forthwith. Section 72 (1)(b) of the Street, Drainage and Building Act 1974 enacts as follows:

72 (1) Where the local authority is satisfied that a building has been erected or is in the course of erection or is about to be erected in contravention of section 70 or, if such building has been erected prior to the coming into force of this Act, in contravention of any law then in force relating to buildings and in respect of which building approval under any law was not given subsequently, the local authority may by notice served on the owner of the land require him to do any one or more of the following acts —

(a) ... ;

(b) to demolish such building within such time as the local authority may specify; and

(c) ... .

Dire consequences would fall on the plaintiff if they were to ignore or fail to comply with the requirements of that written notice. Subsections (4) and (5) of s 72 of the Street, Drainage and Building Act 1974, in no uncertain terms, shackled the plaintiff to the ground and these subsections are now reproduced verbatim:

(4) Any person who fails to comply with the requirements of the notice shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred and fifty ringgit for every day that the offence is continued after expiry of the period specified in the notice.

(5) Where the owner fails to comply with the requirements of the notice, the local authority may do any or all of the acts required by the notice and notwithstanding the owner's liability to pay any fine under subsection (4), the owner shall pay such sums to the local authority as may be required under subsection (3) and shall be deemed to have indemnified the local authority in carrying out the terms of the notice as if he had requested the local authority to do so.

On 14 May 1995, the defendants by letter confirmed that they would move from the site out of the plaintiff's estate. That letter was worded thus:

Sri Sakthi Migu Thurgaiamman Temple
Batu 22, Ladang Tai Tak, Kota Tinggi, Johor.

Rujukan Kami:

Rujukan Tuan:

Tarikh: 4 May 1995

The Manager,
Tai Tak Estates Ltd,
Kota Tinggi, Johor

Dear Sir,

This is to inform your goodself that we are pleased to remove our temple to a new site which the temple committee has requested. We thank you very much for the same.

The temple committee request your goodself (to) give us one acre of land for the building and please lease it for a longer period.

We also hope and request (you to) assist (us) in levelling the new temple site and the road to the temple accordingly.

In fact, we have already spent about Ringgit Four Hundred Thousand for this present temple. We hope and pray your goodself will kindly consider this matter and help us and for which we will be ever grateful. Sorry for the trouble and thanking you, Sir.

Yours faithfully

1 Chairman: Sgd (Illegible) (PIS)
2 Secretary: Sgd (Illegible)

On 1 June 1995, a deed of settlement was entered between the then committee members of the temple with the plaintiff to resolve the matter once and for all. Clauses 1 and 2 of the deed of settlement stipulated mandatorily that the committee shall deliver vacant possession of the land with all debris removed and the temple demolished on or before 27 October 1995. Clause 3 provided that the plaintiff would provide the defendants with an alternative site for the temple. That deed of settlement was worded in this way:

Deed of settlement

This deed is made this 1st day of June 1995 between Ladang Tai Tak (KT) Sdn Bhd ('LTT') of Batu 21/22, Jalan Kota Tinggi, 81900 Kota Tinggi, Johor of the one part and Persatuan Penganut Sri Sakthi Migu Thurgaiamman Kuil

('PPSS') of Batu 22, Jalan Kota Tinggi, 81900 Kota Tinggi, Johor of the other part. A

Whereas

(a) Ladang Tai Tak (KT) Sdn Bhd is the registered owner of the piece of land held under CT 618 Lot 2138 Mukim Kota Tinggi, District of Kota Tinggi ('the said land'). B

(b) Sometime in March 1987 Persatuan Penganut Sri Sakthi Migu Thurgaiamman Kuil has erected a Hindu temple at the said land at a specified area given by Ladang Tai Tak (KT) Sdn Bhd ('the said temple').

(c) Persatuan Penganut Sri Sakthi Migu Thurgaiamman Kuil has however erected additional shrines outside the boundaries so given without the consent of Ladang Tai Tak (KT) Sdn Bhd and thus unlawfully encroached into the other parts of the said land and have further built the said temple without the approval of the relevant authorities. C

Now it is hereby agreed, as follows:

(1) That Persatuan Penganut Sri Sakthi Migu Thurgaiamman Kuil demolishes the said temple and clears all the debris on the said land whereas the costs and expenses incurred for the demolishing of the said temple and clearing of the debris and transportation to the new site mentioned in condition below be borne by the Persatuan Penganut Sri Sakthi Migu Thurgaiamman Kuil. D

(2) That Persatuan Penganut Sri Sakthi Migu Thurgaiamman Kuil shall deliver at its own costs and expense vacant possession of the said land to LTT on or before 27 October 1995. E

(3) That a new piece of the land will be allocated for the building of a new temple for Persatuan Penganut Sri Sakthi Migu Thurgaiamman Kuil by Ladang Tai Tak (KT) Sdn Bhd measuring approximately one acre as per plan attached hereto as Appendix A subject to the PPSS compliance and undertaking hereunder to comply with all rules, regulations and laws and to obtain the approvals of the relevant authorities at PPSS' own costs and expenses and further subject to such conditions and for such period as may be imposed by LTT at its absolute discretion. F

4) In the event of breach by PPSS of any of the terms of this deed, LTT's offer of an alternative site under cl 3 above shall be revoked without LTT being liable to PPSS for any claims or compensation whatsoever. G

5) PPSS hereby agrees and undertakes to indemnify and keep LTT indemnified against all losses, damages, costs, expenses and liability whatsoever suffered by LTT by reason or arising from the construction of PPSS' temple and its activities thereto.

6) That in the event Persatuan Penganut Sri Sakthi Migu Thurgaiamman Kuil fails to vacate the said land on or before 27 October 1995, an eviction proceeding and such action as LTT deems fit will be taken against the Persatuan Penganut Sri Sakthi Migu Thurgaiamman Kuil whereupon PPSS shall bear all costs, expenses (and solicitors and client costs) and damages due to it. H

This deed shall be binding upon the heirs, personal representatives, assignees and successors-in-title of the parties hereto. I

In witness whereof the parties hereto have respectively set their hands and seals the day and year first above written.

Signed by)
Ladang Tai Tak)
(KT) Sdn Bhd in)
the presence of)

Ladang Tai Tak (KT)
Sdn Bhd
Sgd (Illegible)
.....
Manager

Sgd (Illegible)
Susan Yeap Shuh Sin
Advocate & Solicitor,
Johor Bahru

Signed by)Sgd (Illegible)
Persatuan Penganut)(V Krishnan)
Sri Sakthi Migu)
Thurgaiamman Kuil)7652282

Sgd (Illegible) [PIS]
Suppiah a/l Andy Thavar
(Chairman)

Sgd (Illegible)
P Krishnan
(0017743)
Secretary

Sgd (Illegible)
(N Machap)

Sgd (Illegible)
Susan Yeap Shuh Shin,
Advocate & Solicitor,
Johor Bahru.

However, the defendants breached cl 2 of the deed of settlement by failing to deliver vacant possession on or before 27 October 1995 and this meant that the offer of an alternative site by the plaintiff was thus revoked pursuant to cl 4 of that deed of settlement. The plaintiff through their solicitors sent a letter to the defendants reminding the latter of the need to deliver vacant possession. That letter was dated 25 September 1995 and it was worded thus:

Lam & Lim
Advocates & Solicitors
Peguambela & Peguamcara

Your Ref:
Our Ref: LL/INJ/1255/95
(02)/NL/SY/BAD

Date: 25 September 1995

Persatuan Penganut Sri Sakthi Migu Thurgaiamman Kuil,
Batu 22, Jalan Kota Tinggi,
Johor Bahru, Johor.

Dear Sir,

Re: In the High Court of Malaya in Johor Bahru (Civil Suit No 22-92 of 1995)

We refer to the above matter.

We would like to remind you that you are to deliver vacant possession of a piece of land held under CT 618 Lot 2138, Mukim Kota Tinggi, District of Kota Tinggi owned by our clients M/s Ladang Tai Tak of Batu 21/22, Jalan Kota Tinggi, Johor on or before 27 October 1995 as agreed and stated in the deed of settlement signed by all parties involved on 1 June 1995.

Please be informed that failing to comply with the terms in the said deed, our clients will not hesitate to enforce the consent judgment entered between yourselves and our clients on 7 September 1995 wherein our clients shall proceed to demolish the said temple whereby all costs and expenses will be born(e) by you.

Please be reminded that you are to submit the plan of the new temple to our clients on or before 27 October 1995.

Thank you.

Yours faithfully,
Sgd (Illegible)

Incidentally, breach by the defendants of cl 6 of the deed of settlement rendered the defendants open to eviction proceedings wherein the latter would be liable for all costs and expenses including solicitor and client costs plus damages.

Now, Krishnan — the self-styled 'priest' led a fairly comfortable life and he admitted owning an expensive car worth RM120,000, and a house valued at RM130,000. It was obvious that Krishnan did not stay at the temple site. These are facts that are germane and relevant, in the circumstances, as it showed that the defendants had mala fide intentions and self-profiting motives. A perusal of para 4.12 of Krishnan's affidavit in encl 14 would show a clear cut admission in regard to the collection of donations. It must be noted that the defendants merely raised a bare denial as to the plaintiff's allegation of its commercial activities. Paragraph 27 of Mr Lee's affidavit in encl 9 together with the exhibit marked 'LTT 15' thereto clearly showed that the defendants screened secular movies in the name of religion to collect donations and substantial donations were collected by the defendants. This kind of activity was the past legacy of Krishnan's pirating days and his infamous encounter with FINAS. Madam Nora SW Lam, learned counsel for the plaintiff, aptly described Krishnan's character as a leopard that did not change its spots. Trespass continued to be the norm. Indeed it persisted. It was deposed that on 2 September 1996, the defendants, its agents and/or servants despite a prior warning and prohibition by the plaintiff continued to trespass on the plaintiff's land with a tractor to create an unauthorized road thereto. A police report in regard to that trespass was lodged by Bhagaran a/l Narayanan at Kota Tinggi police post on 3 September 1996 at about 2.55 pm (exh 'LTT 18' of encl 9) and the six photographs annexed to encl 9 and marked as 'LTT 17' were clear and vivid proofs of that wilful trespass. Per se, trespass is a civil wrong. An

A intentional wrongful entry and interference with someone's ownership or rightful possession of land would appropriately define the word trespass. As Fleming on *The Law of Torts* (5th Ed) at p 38 said:

> Intentional invasions are actionable whether resulting in harm or not. Neither the intruder's motive is material nor the fact that his entry actually benefitted
B the occupier. The requisite intent is present if the defendant desires to make an entry, although unaware that he is thereby interfering with another's rights.

Here from the photographs marked as 'LTT 17' of encl 9, there was an entry onto the plaintiff's land and the defendants must be aware of that intentional entry. If that is not trespass I do not know what is. Krishnan, the
C fifth defendant, in encl 14 merely denied that there was trespass by the defendants onto the plaintiff's land. Such bare denial was clearly insufficient to dislodge the allegation of trespass. In my judgment, there was indeed trespass of an intentional kind on the plaintiff's land.

Reverting back to the narration of the facts, the defendants proceeded
D further to instil fear on the workers of the plaintiff. Krishnan, the fifth defendant — the self-styled 'priest' acted in an unbecoming manner. Krishnan and some of his friends armed with 'parangs' came to the compound of the plaintiff's office and in the presence of Mohd Nasir Embong and the plaintiff's staff shouted at the top of their voices and created a commotion. All these happened on 18 January 1998 and Mohd
E Nasir bin Embong had lodged a police report to that effect as reflected at exh 'LTT 20' of encl 9. The plaintiff's stand was that they had suffered losses and damage as a result of the defendants' breach of the deed of settlement. On 20 October 1997 the plaintiff through its solicitors issued another eviction notice to the defendants giving the latter the deadline by 17 November 1997 to deliver vacant possession but the defendants simply
F ignored that notice, nonchalantly.

I have purposely taken an arduous course of action by narrating the facts in some detail. All these facts would in the final analysis be weighed in favour of the plaintiff as opposed to the defendants. I will now proceed to examine the relevant issues germane to the occasion.

G

Declaration

The plaintiff sought a declaration — to declare the defendants' temple structures as illegal. Declaration is an important branch of the Administrative Law. The two main advantages of a declaratory action are.
H Firstly, to obtain the requisite relief before the damage is caused. Secondly, to seek a legal clarification of a legal issue. The authorities that are frequently bandied around would be: *Petaling Tin Bhd v Lee Kian Chan & Ors* [1994] 1 MLJ 657 at p 673 and *Datuk Syed Kechik bin Syed Mohamed v Government of Malaysia & Anor* [1979] 2 MLJ 101. A declaratory order has no coercive force at all. It merely declares the legal rights of the parties
I and nothing more. But the court has an unlimited jurisdiction to make a declaration. In the words of Lord Sterndale MR in *Hanson v Radcliffe Urban District Council* [1922] 2 Ch 490:

> The power of the court to make a declaration ... is almost unlimited; I might say only limited by its own discretion.

In the same vein Viscount Radcliffe in *Ikebife Ibeneweka & Ors v Egbuna Peter & Anor* [1964] 1 WLR 219 said (at p 225):

> .... the power of the court to make a declaration, where it is a question of defining the rights of two parties, is almost unlimited; I might say only limited by its own discretion. The discretion should, of course, be exercised judicially, but it seems to me that the discretion is very wide.

The Federal Court in *Land Executive Committee of Federal Territory v Syarikat Harper Gilfillan Bhd* [1981] 1 MLJ 234 advised caution in the use of declaration as it 'must not be carried too far' and must be exercised with 'caution' and 'sparingly' and 'with great care and jealously.' But, of course, as Edgar Joseph Jr SCJ said in *Petaling Tin Bhd v Lee Kian Chan* the court must always 'weigh the advantages of granting declaratory relief as against its disadvantages.'

That brilliant judge, Abdoolcader J in *Lim Cho Hock v Government of the State of Perak & Ors* [1980] 2 MLJ 148 emphasised in strong terms that the jurisdiction to grant declarations is extremely wide and I may add far reaching. It has grown by leaps and bounds (*Tan Keat Seng Kitson v Kerajaan Malaysia* [1996] 2 CLJ 722; [1996] 1 MLJ 454; and [1996] 1 AMR 536). Section 41 of the Specific Relief Act 1950 makes provisions for a declaratory decree. Thus, any person entitled to any 'legal character', or to any 'right as to any property', may institute a suit against any person denying, or interested to deny, his title to the 'character' or 'right'. And, of course, the court may in its discretion make a declaration that he is so entitled under the law. Under s 41 of the Specific Relief Act 1950, the court will only make a declaration when the plaintiff has some legal right or legal position to advance. It seems that a much broader power enshrined in the court to issue declaration is provided for in O 16 r 16 of the Rules of the High Court 1980 ('RHC'), which reads as follows:

> No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not consequential relief is or could be claimed.

and in *Sungai Wangi Estate v Uni* [1975] 1 MLJ 136, Abdoolcader J in construing that order [O 25 r 5] said that (at p 140): '[it] has the widest application as it provides that where a declaration is asked for, it may not be objected to on the ground that no consequential relief is or could be claimed. It does not prescribe any special procedure, nor is it limited to any specific matter. It applies to all proceedings for a declaration.'

An argument was advanced by Madam Nora SW Lam for the plaintiff to the effect that the plaintiff was entitled to retake possession of the land where the temple was built. Clearly on the facts the plaintiff has ab initio established a cause of action. It was the plaintiff's land that the defendants had trespassed onto and erected that temple without approval from the relevant authorities. From the long line of authorities it is apparent that the

jurisdiction of the court to make a declaration is not confined to cases in which the plaintiff has a complete and subsisting cause of action (*Guaranty Trust Co of New York v Hannay & Co* [1915] 2 KB 536 (CA); *Dewan Singh v M Thynappa Ltd & Yeo* [1939] MLJ 278; *Haji Hussin bin Haji Ali & Ors v Datuk Haji Mohamed bin Yaacob* [1983] 2 MLJ 227 (FC); *Karpal Singh v Sultan of Selangor* [1988] 1 MLJ 64; and *Tengku Mariam bte Tengku Sri Wa Raja & Anor v Commissioner for Religious Affairs* [1969] 1 MLJ 110), yet the plaintiff here has shown a subsisting cause of action. The plaintiff too has shown that they have such an interest in the subject matter of the action — namely, the land as to justify them in seeking relief from this court (*Tan Sri Haji Othman Saat v Mohamed bin Ismail* [1982] 2 MLJ 177 (FC)).

Janab's Key To Civil Procedure in Malaysia and Singapore (2nd Ed) at p 144 cites favourably a book entitled *Declaratory Orders* by Young and it would be opportune to quote verbatim from *Janab's*. It reads as follows:

> Young in his book on *Declaratory Orders* (2nd Ed) defines a declaratory judgment as one that does not involve a cause of action in the usual sense and that six factors must be present before there can be a declaratory order. These are:
>
> (1) There must exist a controversy between the parties.
>
> (2) The proceedings must involve a 'right'.
>
> (3) The proceedings must be brought by a person who has a proper or tangible interest in obtaining the order, which is usually referred to as 'standing' or 'locus standi'.
>
> (4) The controversy must be subject to the court's jurisdiction.
>
> (5) The defendant must be a person having a proper or tangible interest in opposing the plaintiff's claims.
>
> (6) The issue must be ripe, ie it must not be of academic interest, hypothetical or one whose resolution would be of no practical utility.

And from the factual matrix of the present case, all the six ingredients have been fulfilled to the core and, consequently, I have no hesitation in granting the declaration sought for by the plaintiff.

Undaunted Madam Vijayaletchumi Gopal, learned counsel for the defendants, argued that on the basis of the promissory estoppel the plaintiff had no right to retake possession of the land wherein the temple stood. This was her argument to counter the declaration which the plaintiff sought for. It is therefore necessary to examine the doctrine of estoppel at some length.

The doctrine of estoppel

Madam Vijayaletchumi Gopal argued that the plaintiff did not raise at any time any objection when the defendants built the concrete temple on the plaintiff's land. The temple was said to be big and obviously during its construction lorries would have to come into the estate bringing sand, wood, brick, etc. It was submitted that the plaintiff kept quite and even came to the site from time to time to see the progress of the construction of the temple. When Mr Lee realized the importance of the deprivation of the use of the land wherein the temple was sited for oil palm cultivation and

especially when the commodity prices of oil palm were at its highest, Mr Lee decided to demolish the temple that was said to be worth RM400,000 with all sorts of lame excuses. Madam Vijayaletchumi Gopal agreed with the plaintiff's solicitor's submission that the defendants merely possess a gratuitous licence but she argued that it cannot be revoked at will as equity will emerge to protect the defendants.

To say that the plaintiff did not at any time raise any objection when the defendants built the concrete temple was an incorrect assessment of the available evidence. Mr Mohamed bin Malek in his letter as reproduced somewhere in this judgment was quite blunt when he said that the plaintiff did not give its blessing to the construction of the temple. Since the temple was already constructed, Mr Mohamed bin Malek restricted the construction to an area of 150 feet by 90 feet only and at the same time disclaimed responsibility for any difficulty that might ensue thereafter. The defendants did not stop the construction of the temple to the specified area as set out by Mr Mohamed bin Malek but instead became more adventurous and employed foreign personalities to shape the designs of the temple on a bigger scale. The consultant surveyor by letter dated 12 January 1998 to Messrs Lam & Lim with a copy to the plaintiff categorically stated that 'from the recent survey the total area covered by the Hindu temple compound is 3939.81 square metre (42,408 square feet) based on our plan No JM/203/97/CA which is coloured red' (see exh 'LTT 7A' of encl 9). Reliance on the case of *Yong Tong Hong v Siew Soon Wah & Ors* [1971] 2 MLJ 105 by the defendants' counsel to bolster up the defendants' case that they were allowed to be on the land for an indefinite period of time was misconceived. I have in *Petronas Dagangan Sdn Bhd v Omar bin Abdul Samad* [1996] 4 MLJ 391 scrutinised the facts of *Yong Tong Hong v Siew Soon Wah & Ors* and at p 401 of the report, I said:

> The facts in this case are poles apart from *Yong Tong Hong v Siew Soon Wah & Ors* [1971] 2 MLJ 105 where the appellant there had expended money on the land of another in the expectation of being allowed to remain in occupation and an agreement was drawn up to the effect that the tenancy was to endure as long as the tenant wished to occupy and from this there was no uncertainty in the minds of the parties as to the period of the lease. The then Federal Court in allowing the appeal held that:
>
> > '... the court would give effect to the expressed intention of the parties by holding that the agreement was one for the grant of as long a lease as the law allows which, under the provisions of s 221(3)(b) of the National Land Code 1965, is a maximum period of 30 years'.

Here, the plaintiff did not allow the defendants to be on the land and in fact held the defendants accountable for any difficulty that might arise in future. Neither was there an agreement drawn up between the plaintiff and the defendants to allow the defendants to remain on the land for an indefinite period of time. It must be borne in mind that the deed of settlement dated 1 June 1995 was arrived at after protracted attempts by the plaintiff to settle the dispute amicably without resort to legal proceedings. At recital 'C' of the deed of settlement as reproduced somewhere in this judgment, it was categorically stated that the temple was erected on other parts of the

plaintiff's land and it was built without the approval of the relevant authorities. For fear of repetition, cl 1 of the deed of settlement stipulated that the defendants agreed to demolish the temple and clear all debris and by cl 2 thereof the defendants were to deliver at its own costs and expenses vacant possession on or before 27 October 1995.

To say that the plaintiff stood by while the defendants built the concrete temple was without doubt an attempt at bolstering up the defendants' case. There was not an iota of evidence to support this kind of submission. In fact, there was no inducement or encouragement by the plaintiff to lead the defendants to expend any monies on the concrete temple. The factual matrix would indicate the following sequence of events:

(1) prior to the construction of the concrete temple in early 1990's, the plaintiff already registered its objection (see paras 4.28, 4.29 and 14.34 of the fifth defendant's (Krishnan's) affidavit in encl 14);

(2) between then and in 1995, the plaintiff had asked the defendants to deal with its lawyers (see para 4.30 of Mr Lee's affidavit in encl 9);

(3) the deed of settlement was signed on 1 June 1995 and between 25 September 1995 (exh 'LTT 10' of encl 9) and 20 October 1997 (exh 'LTT 19' of encl 9) reminders were sent to the defendants to vacate the land but the defendants remained adamant and stayed on the land ignoring the plaintiff's rights and blatantly disregarded the provisions of the Street, Drainage and Building Act 1974.

and the doctrine of estoppel can never be raised to aid the defendants. No doubt estoppel is a flexible doctrine where justice is done according to the facts of the particular case (*Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd* [1995] 3 MLJ 331). But the facts of the present case cannot raise the estoppel doctrine at all. Lord Denning in *WJ Alan & Co Ltd v El Nasr Export and Import Co* [1972] 2 QB 189 at p 347C said that:

> If one party by his consent, leads another to believe that the strict rights arising under the contract will not be insisted upon intending that the other should act on that behalf, and he does act on it, then the first party will not afterwards be allowed to insist on strict legal rights when it would be inequitable for him to do so.

And in the context of the present case, plaintiff did not just stand idle or remain silent. It did not influence the defendants to incur expenditure for the construction of the temple. It did not lead the defendants to believe that they would not be retaking possession of the land wherein the temple was built. As early as 1985, the plaintiff, through the letter of Mr Mohamed bin Malek as alluded to earlier, had warned that the plaintiff was not responsible for any difficulty that might arise. As Gopal Sri Ram JCA said in *Chor Phaik Har & Ors v Choong Lye Hock Estates Sdn Bhd & Ors* [1996] 2 MLJ 206 (CA), 216:

> Although decided cases speak of some of the features of the doctrine, such as a declaration or a representation and an inducement, these are but statements made in the context of the facts and circumstances of the particular case in

> which they appear. At the end of the day, the court has to answer the question: is it just that this particular litigant should, in the light of his conduct, succeed in the action given the peculiar facts of the case? If the answer to that question is in the affirmative, then the doctrine does not apply; if it is in the negative, then it does.

Now, given the peculiar facts of the present case the answer to the question as posed by *Chor Phaik Har* would be in the affirmative. It was certainly just that the plaintiff should be entitled to succeed in these proceedings. Undaunted, the defendants' relied on the decision of the High Court in *Rosman bin Haji Abdul Rashid v Rosmah Begum bte Bahadur Beg* [1993] 2 MLJ 196 to drive home the message that the expenditure of money was incurred by the defendants at the behest of the plaintiff and therefore estoppel would come into play to assist the defendants. Factually *Rosman bin Haji Abdul Rashid v Rosmah Begum bte Bahadur Beg* are different from our present case. There it concerned payment of ground rent to the landlord. Here there was no payment of ground rent to the plaintiff by the defendants. Here too the dealings and commitments with the building contractors in regard to the construction of the temple and the extent of the incurring expenditure were solely handled by the defendants without the involvement of the plaintiff at all. Here, in reality the extension and construction of the temple received vehement objections by the plaintiff through Mr Lee. *Rosman bin Haji Abdul Rashid v Rosmah Begum bte Sahadur Beg* too concerned the relationship of a landlord and tenant and it was an appeal from the decision of the learned magistrate and at pp 203 to 204, I said:

> It must be borne in mind that the relationship of landlord and tenant can be created only by a contract, valid and legal according to the law subsisting at the time of its execution. The question to be considered in the instant appeal is this: what was the relationship of the appellant and the respondent after 19 December 1955? From the available evidence the ownership of the unnumbered house has changed hands — from the appellant (I wholeheartedly agree with the learned magistrate that the unnumbered house was built and owned before 19 December 1955 by the appellant) to the transferee (Zainab) and then to the purchaser, DW2. The latter allowed the respondent to stay at the unnumbered house with her parents on payment of RM60 per month as rental and it was in evidence that the RM4,250 advanced by DW2 to settle the debt of the appellant to Lee Hock Seng was repaid by Zainab and the respondent. There was no legal tenancy between the appellant and the respondent. Therefore there can never be any question of the continuance of the tenancy as envisaged in s 116 of the Evidence Act 1950. Consequently, the respondent rightly challenged the status of the appellant and he (respondent) cannot be deemed to be estopped from denying that the title of the landlord (appellant) has ended. In that event, the notice to evict was bad in law and the appellant was not entitled to evict the respondent from the unnumbered house.

Here, the situation was entirely different. There was no landlord tenant relationship between the plaintiff and the defendants at all. Here the defendants merely had gratuitous licence and such licence was terminable at will (see the averments of Mr Lee in paras 29 and 30 of encl 9).

A Mr Mohamed bin Malek's warning letter dated 24 March 1987 went unheeded. The eviction notice from the plaintiff's solicitors dated 20 October 1997 was also ignored by the defendants. In *Wee Kang Whye & Anor v Lee Woon Tong* [1974] 1 MLJ 7, the facts of which may be stated as follows. There the defendant was allowed to occupy the plaintiffs' land and to build a temporary structure with one condition and that was the B defendant was to vacate the place without any compensation when requested by the plaintiffs. The latter wanted to sell the property with vacant possession and was kind enough to offer the defendant RM5,000 as compensation to move out. Initially the defendant agreed to accept that sum and to vacate but later he changed his mind and refused to move out. C The plaintiffs then brought an action for possession. It was held by Choor Singh J that:

> (1) the plaintiffs ... had granted the defendant a temporary gratuitous licence which [the plaintiffs] were entitled to revoke at will. The defendant was said not to have acquired rights at all, either in law or in equity;
>
> D (2) for these reasons the plaintiffs were entitled to an order of possession against the defendant.

Applying *Wee Kang Whye & Anor v Lee Woon Tong*, it would be apparent that the right of the defendants to remain on the plaintiff's land was terminated when the defendants received the notice of eviction since the E gratuitous licence can be revoked at will.

Next, the case of *Shaik Alauddin v Kamrutheen a/l K Dawood* [1988] 3 MLJ 336 would be germane to the occasion. The plaintiff in that case was a partner of a firm managed by the defendant in premises No 73, Jalan Mahkota, Kuantan. By a deed of assignment dated 28 September 1983, the F plaintiff became the tenant of the said premises. By an agreement dated 17 May 1986, the plaintiff and the other partners of the firm withdrew from the said firm in favour of the defendant. It was a term of the agreement that the defendant would vacate and deliver possession of the said premises on or before 31 December 1986. The defendant in breach of this agreement refused to vacate the premises and deliver vacant possession and continued G to remain and be in occupation. Lamin J (now President of the Court of Appeal) held, inter alia, that no tenancy of any kind was intended to be created in favour of the defendant before 31 December 1986 and thereafter the defendant was considered to be a trespasser. His Lordship further held that the defendant was only given a personal privilege to remain on the premises in order to give him time to make all the preparations to leave and H for that reason his Lordship saw no reason as to why the injunction could not be issued.

Next would be the case of *Thompson v Park* [1944] 1 KB 408 at p 410. In that case, the owner of certain premises had revoked a licence to use them granted to another person and an interim injunction was granted to restrain I the former licensee from trespassing on the premises, even though he might have a claim for damages for breach of contract against the owner of the premises in respect of the revocation of the licence and the speech of Goddard LJ merits reproduction. There his Lordship succinctly said:

> ... It is a strange argument to address to a court of law that we ought to help the defendant who has trespassed and got himself into these premises in the way in which he has done and to say that would be preserving the status quo and a good reason for not granting an injunction. The strength of the argument which was put forward on the defendant's behalf was that, assuming that there had been a breach of contract on the part of the plaintiff, the defendant had a right to be where he was. That is an entire misconception of the legal position, which was that the defendant was a licensee on the premises. That licence has been withdrawn. Whether it has been rightly withdrawn or wrongly withdrawn matters nothing for this purpose. The licensee, once his license is withdrawn, has no right to re-enter on the land. If he does, he is a common trespasser. The law is properly laid down in the following passage in *Salmond on Torts* (9th Ed) p 258: 'He who is ejected from land by the licensor in breach of his licence, or is otherwise disturbed by the licensor in the exercise of it, has even at common law, and notwithstanding *Wood v Leadbitter* (1845) 13 M & W 838 a good cause of action in contract' — see *Kerrison v Smith* [1897] 2 QB 445 — 'If, however, the licensee insists, notwithstanding the revocation of his licence (even though it is thus premature and wrongful) in entering or remaining on the land or in otherwise exercising his licence, he becomes at common law a trespasser or other wrongdoer, and liable in an action accordingly at the suit of the licensor. The rule is an illustration of the difference between a legal power to do a thing effectively and a legal *right* or *liberty* to do it lawfully. A licensor has at common law the *power* to revoke the licence at any time, but he has no right to revoke it before the expiration of the term'. As this is an interlocutory proceeding it is convenient, instead of going through a large number of cases, simply to state the opinion of a leading text-book writer of great authority with which I entirely agree.

Finally, in *Petronas Dagangan Sdn Bhd v Omar bin Abdul Samad* at pp 399 to 400 on gratuitous licence, I had this to say:

> In law, a bare licence without any contractual term in favour of the licensee can be revoked at will by the licensor (see *Winter Garden Theatre Ltd v Millennium Productions Ltd* [1948] AC 173).

In a last minute attempt to float the sinking ship, learned counsel for the defendants cited *Sia Siew Hong & Ors v Lim Gim Chian & Anor* [1995] 3 MLJ 141 (CA); and *Teh Poh Wah v Seremban Securities Sdn Bhd* [1996] 1 MLJ 701 (CA), and argued that the doctrine of estoppel should be triggered off in favour of the defendants. I will summarily say that these two Court of Appeal cases have no relevance to the facts of the present case. The first case dealt with an application of the doctrine of estoppel to a defence of limitation and precluded a party who was guilty of unconscionable conduct from relying on the Limitation Act 1953. The second case involved the husband who entered into a written contract with the stockbroker to buy and sell shares using the wife's name; the husband had a Mareva order imposed on him and the stockbroker was not aware of it and the court had to consider whether the contract was tainted with illegality.

Now, having scanned the available evidence and the authorities discussed above, I have no hesitation to hold that the doctrine of estoppel should be raised and applied vigorously in favour of the plaintiff. The defendants' conduct in issuing a letter dated 4 May 1995 as reproduced

somewhere in this judgment would tie the defendants to the ground firmly. That letter once and for all showed the mental state of mind of the defendants in that they knew that their occupation of the land where the temple was located was wrongful and they even acknowledged that the offer of the new site was out of the plaintiff's goodwill and magnanimous gesture.

Mandatory injunction

On the principles of interlocutory mandatory injunction, reference should be made to the case of *Petronas Dagangan Sdn Bhd v Omar bin Abdul Samad*, where at pp 396–397 the court said :

> Now, what is the law applicable to the facts as narrated above. It must first be pointed out that an interlocutory mandatory injunction before trial is sparingly granted and if granted it would be in exceptional circumstances. Abdoolcader J (as he then was) in *Sivaperuman v Heah Seok Yeong Realty Sdn Bhd* [1979] 1 MLJ 150 aptly said at pp 151–152:
>
> > 'I have earlier pointed out that the interlocutory injunction granted is mandatory in effect and substance and the dismissal of the appellant has been referred to and is pending before the Industrial Court as a trade dispute. In *Harold Stephen & Co Ltd & Ors v Post Office* [1978] 1 All ER 939, a decision of the Court of Appeal in England in July last year, Geoffrey Lane LJ said at p 944:
> >
> > > "Finally, and most seriously as I see it, the ground on which I would primarily base my decision would be this. It can only be in very rare circumstances and in the most extreme circumstances that this court should interfere by way of mandatory injunction in the delicate mechanism of industrial disputes and industrial negotiations." '
>
> KC Vohrah J in *Cayman Development (Kedah) Sdn Bhd v Puah Kiew & Ors* [1990] 3 MLJ 110 observed as follows at p 112:
>
> > 'In *Manchester Corp v Connolly* [1970] 1 All ER 961, (see also *Lee Ying Piew & Ors v MP Tan Electrical & Credit Sdn Bhd* [1989] 3 MLJ 228), it was held that an injunction may be granted even if it would give the plaintiff the whole remedy before the action is tried where plainly there is no defence to the action and the only object in raising the defence is to cause delay.'
>
> Salleh Abas FJ (as he then was) in *Tam Kam Cheong v Stephen Leong Kon Sang & Anor* [1980] 1 MLJ 36 (FC) in trenchant terms had this to say on the question of interlocutory mandatory injunction at p 42:
>
> > 'The grant of this injunction is entirely discretionary and it is certainly not issued as a matter of course (see *Morris v Redland Bricks Ltd* [1970] AC 653 at p 665.) In exercise of its jurisdiction on the issue of mandatory injunction, the court has to be extremely cautious and must act with moderation as the jurisdiction has to be exercised sparingly (see *Wrotham Park Estate v Parkside Home* [1974] 2 All ER 321 at p 337.) It can be issued only in cases where the injury done for the prevention or rectification of which injunction is sought cannot be adequately compensated by pecuniary damages. On the other hand, there is no rule that this injunction must be refused upon the mere ground that the injury had been completed before the suit was filed. Every case has to depend upon its own circumstances, and

> it is a generally accepted view that the court will not interfere by way of mandatory injunction except in cases in which extreme, or at all events very serious, damage will ensue from its interference being withheld (see *Ourell v Pritchard* [1866] LR 1 Ch App 244 at p 250.) The question of cost to the defendant in carrying out the injunction is also a relevant factor. Such cost must be weighed or balanced with the extent of the injury done to the plaintiff (see *Morris v Redland Brick Ltd*)'.
>
> Section 52(3)(d) of the Specific Relief Act 1950 speaks of a situation where the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, in which extent the court may grant a perpetual injunction where it is probable that the pecuniary compensation cannot be got for the invasion.

Section 51(2) of the Specific Relief Act 1950 speaks of perpetual injunction and under it, a perpetual injunction can only be granted by a decree made after a hearing and upon the merits of the suit. By such an injunction, the defendant is perpetually enjoined from asserting a right, or from committing an Act which would be contrary to the rights of the plaintiff. By s 52(1) of the Specific Relief Act 1950, a perpetual injunction may be granted to prevent the breach obligation existing in favour of the applicant, whether expressly or by necessary implication. According to s 53 of the Specific Relief Act 1950, in order to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, and the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel the performance of the requisite acts. Thus, it goes without saying that the court has the jurisdiction to grant a mandatory injunction on an interlocutory application (*Luganda v Service Hotels Ltd* [1969] 2 Ch 209; *Thomas M Heysek & Anor v Boyden World Corp* [1989] 1 MLJ 219; and *Bonner v Great Western Railway Co* (1883) 24 Ch D 1). A mandatory injunction in a double negative form can be seen in the case of *Daniel v Ferguson* [1891] 2 Ch 27. In that case an interlocutory injunction which in effect required the defendants there to demolish part of the wall erected by him was expressed to be an order restraining the defendant from permitting the wall to remain. Another example would be the case of *Strelley v Pearson* (1880) 15 Ch D 113, where the plaintiffs there sought an interlocutory injunction to restrain the defendant from, interestingly, ceasing to pump water out of the mine. Nowadays, we hardly see a mandatory injunction in a double negative form since the English Court of Appeal in *Jackson v Normanby Bank Co* [1899] 1 Ch 438 put an end to it. There, the English Court of Appeal succinctly said that (at pp 438–439): '... in future, it will be better for the court to say in plain terms what it means, and in direct words to order the buildings to be pulled down and removed.' It is quite understandable that the courts are reluctant to grant a mandatory injunction at the interlocutory stage which will alter the status quo unless the circumstances warrant it. Chan Sek Keong J in *Thomas M Heysek v Boyden World Corp* said at pp 221–222:

> ... Although the relief that is being sought by the defendant is interim in form, it is, in the circumstances of this case, mandatory in effect ... It has the effect of altering the status quo rather than preserving it. Accordingly, a court should be slow in granting it.

On the facts of the present case, I have no hesitation in granting the mandatory injunctions sought for by the plaintiff. The continued existence of the temple on the plaintiff's land would open the plaintiff to prosecution in a court of law for an offence under s 72 of the Street, Drainage and Building Act 1974. Put in another way, the failure and refusal by the defendants to demolish the temple structure renders the plaintiff in breach of a statutory obligation under the Street, Drainage and Building Act 1974. This immediately brings to mind the case of *Krishna Kali Mullick v Babulal Shaw & Ors* AIR 1965 Cal 148. There the plaintiff was the neighbour of the defendant and the latter, at the material time, constructed his building in violation of the Municipal Statutory Rules. An illegal construction by the defendant materially affected the right to or enjoyment of the plaintiff's property and the court held that the defendant owe a duty and an obligation under the statute not only to the Municipal Council as custodian of the owners of the building but also to the plaintiff. This duty arose by implication under the statute. AN Ray J at p 155 of the report had this to say:

> (42) In the present case the defendants have an obligation under the Statute to build in accordance with Rules. That statutory obligation, it is contended by the defendants, is enforceable by the Corporation only under some sections of the Act. The Corporation has the right to proceed against the offending building because of the benefit and the interest of the public safeguarded by the Act that buildings shall not be constructed in violation of the Statute. An illegal construction by the defendants materially affects the right to or enjoyment of the plaintiff's property. The defendants owe duty and obligation under the Statute not only to the Corporation as custodian of the owners of buildings but also to the plaintiff. This duty arises by implication under the Statute. If the defendant constructs a building according to a plan which is illegal the adjoining owner has the right to ask for an injunction because there is an invasion of right to and enjoyment of property by the illegal construction and the defendant owes an obligation to the plaintiff to obey the law.

Earlier on at p 152 of the report, after AN Ray J referred to the case of *Solomons v R Gertzenstein Ltd & Ors* [1954] 2 QB 243, his Lordship said:

> That was a case where a house in Soho was sublet to a number of tenants who carried on a variety of occupations. The London County Council had required the owners of the building to comply with s 12 of the London Building Act 1905, which required that a trap-door with a fixed hinged ladder, or other means of access to the roof be provided. There was an action for damages for personal injuries and the plaintiff alleged breach of statutory duty. It was held that as the duties imposed by the London Buildings Acts were imposed primarily for the protection of a particular ascertainable class, viz the persons in a building, those persons would have a right to an action for damages for a breach of statutory duty notwithstanding that the statute also imposed penalties for such breaches. In the present case the relief asked for is injunction. That is on the basis of an obligation. The contention on behalf of the defendants was there was no express obligation and there could not be any implied obligation. Counsel for the plaintiff rightly contended that the duty was in respect of an ascertainable class and breach of such a duty was actionable by a member of such class for whose benefit the statute was created

and in any event, the defendant's illegal construction could be prevented by an injunction by reason of the fact that the illegality was by reason of statutory violation of statutory obligation. Somervell L J in *Solomons* case [1954] 2 QB 243 said:

> 'There have been Acts which expressly confer a right of action for a penalty or damages on a person aggrieved by its breach. There have been Acts which impose a duty without any sanction. We are concerned with neither of them but with Acts which (i) contain provisions which protect members of the public or some members in certain circumstances, (ii) contain their own sanction by penalties or otherwise for the enforcement of these provisions. The courts have held that, under the common law, a person aggrieved by a breach of certain of such Acts has a right to sue for damages although the Acts itself provides only for a criminal sanction.'

Birkett LJ in the same case said (at p 261):

> ... I agree with the Lord Chief Justice that the duty imposed in the present case was imposed for the benefit of a particular ascertainable class, namely, the persons in the building, and those persons have a right of action for a breach of statutory duty, notwithstanding that penalties are also provided for breaches.'

Another case of interest to refer to in the context of a mandatory perpetual injunction would be the case of *B Raghunandan Saran v Smt Kanta Devi & Anor* AIR 1975 All 130. That case involved a plaintiff's appeal out of a suit for a perpetual injunction to prohibit the defendant from constructing the projection from his house over the lane in accordance with the sanction alleged to have been obtained by him from the Municipal Board. The plaintiff came to the court on the ground that his easementary right to get light and air into his house, would be curtailed by the proposed construction. The second ground on which he sought the injunction was that the street over which the defendants intended to make the construction was only about five feet wide and the bye-laws of the Municipal Board prohibited the making of any projection over such a lane. That lane ran between the houses of the plaintiff and the defendants. The defendants contested the suit on the ground that the construction of the projection was not likely to affect the plaintiff's right to get light and air, and that the sanction obtained from the municipal board was valid and legal. In the course of his judgment, Hari Swarup J considered the Indian s 38(1) of the Specific Relief Act 1877 which is in pari materia with our s 52(1) of the Specific Relief Act 1950 and the relevant parts of his Lordship's judgment can be seen at p 132 of the report. This was what his Lordship said:

Section 38(1) runs as under:

> Subject to the other provisions contained in or referred to by this Chapter, perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

8-A 'Obligation' is defined in the Specific Relief Act as follows: 'Obligation includes every duty enforceable by law.' Thus when the Legislature makes a law or the subordinate Legislature like a Municipal Board,

frames a bye-law it casts an obligation on every citizen who is affected by that law or bye-law to obey it and not to violate it, and this obligation, at least by implication, exists for the benefit of every citizen who may, even remotely, be likely to have an adverse impact by the violation of the law or the bye-law.

9 The purpose for which a bye-law can be framed by the Municipal Board is given in s 298 of the UP Municipalities Act which runs as under:

> 298(1) A Board by special resolution may, and where required by the State Government shall, make bye-laws applicable to the whole or any part of the Municipality, consistent with this Act and with any rule, for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the Municipality and for the furtherance of the Municipal administration under this Act.

Under sub-s (2) of s 298 different heads have, without prejudice to the generality of the power conferred by sub-s (1), been mentioned indicating the purpose for which the bye-laws may be framed. When a Municipal Board makes bye-laws of the present nature, it does so for the purpose of promoting and maintaining health, safety and convenience of the inhabitants of the municipality. Their violation will naturally affect adversely the health, safety and convenience of the citizens: it must therefore, be held that the bye-law casts an obligation on citizens not to act in violation thereof, and every citizen can claim an injunction to prevent the breach of the bye-law. A similar view was taken by the Calcutta High Court in AIR 1965 Cal 148 where, dealing with the rights of a resident in the locality to check the constructions which were going to be made without leaving adequate space as required under the bye-law, it was observed by AN Roy J that: 'it was impossible to say that the petitioner would not be affected by any breach of the existing rules, and in my view he has a right to insist that these rules should be strictly observed in reference to any plan.

10 Further, the defendant in the present case was living in the house adjoining the lane and could be expected to use the lane and would thus have sufficient interest to approach the court for compelling the defendant to make no projection over the lane which might violate the bye-law. The Municipal Board, of course, as the custodian of the rights of the people has been given by law the right to enforce its bye-laws by refusing sanction, preventing constructions and demolishing buildings that may violate any bye-law. But if the Municipal Board fails to perform its duty, it will not mean that the right of the citizen is lost to get the law enforced through court. It is the duty of courts in India to see that the law is obeyed and not violated.

11 In the result the appeal is allowed. The decree of the court below is set aside and the plaintiff's suit is decreed. Let an injunction issue prohibiting the defendant from making the intended constructions in violation of the bye-law of the Municipal Board. Sambhal contained in exh 4 in the suit. In the circumstances of the case the parties are directed to bear their own costs.

Painstakingly applying the principles as set out in *Krishna Kali Mullick*'s case, there was a breach of a statutory duty or breach of a statutory obligation on the part of the defendants in the present case for failure to obtain approvals from the relevant authorities for the construction of the

temple structures. This was in fact highlighted by the Majlis Daerah Kota Tinggi in their letter to the plaintiff dated 29 March 1995 wherein the plaintiff was said to have committed an offence under the Street, Drainage and Building Act 1974 and was required to demolish the temple structures. That the temples were constructed without the relevant approved plans from the Majlis Daerah Kota Tinggi was also confirmed by Krishnan — the fifth defendant, in his affidavit in encl 14 at para 4.32 where he deposed as follows:

> It is true that no plan has been submitted to the Government authorities for its approval.

Obviously there was injury and damage to the plaintiff as the registered proprietor of the land wherein the temple stood as the plaintiff was deprived of the use of that portion of land. The plaintiff too suffered trespass by third parties, namely servants, agents and invitees of the defendants when they entered the plaintiff's land to go to the temple. The breach of statutory obligation caused or materially contributed and continue to contribute to the plaintiff's injury or damage. Madam Nora SW Lam rightly submitted that pecuniary compensation was inadequate for the injury sustained by the plaintiff as it concerned usage of the plaintiff's land. The existence of the temple on that part of the plaintiff's land prevented the plaintiff from cultivating that part as an oil palm estate bearing in mind the current high price of that commodity. In *Petronas Dagangan Sdn Bhd v Omar bin Abdul Samad* at p 400, I said as follows:

> ... The plaintiff has established itself as the proprietor of the land through the lease and ex debito justitiae he is entitled to the injunction (see *Ng Yee Fong & Anor v EW Talalla* [1986] 1 MLJ 25) which he sought for.

And the same principle would apply here. Ex debito justitiae the plaintiff here, as the registered proprietor of the land, was also entitled to that injunction.

The Federal Court in *Karuppannan v Balakrishnen (Chong Lee Chin & Ors, third parties)* [1994] 3 MLJ 584 had occasion to consider the issue of interlocutory mandatory injunction. Lamin FCJ (now President of the Court of Appeal) delivering the judgment of the court had this to say at p 593 of the report:

> ... Here we wish to repeat that once a party and, in this case, the respondent/plaintiff has established his legal right and of the fact of its violation, he is entitled to the perpetual injunction unless the appellant/defendant can show that there is something special in the circumstances of the case that will disentitle the respondent/plaintiff to the remedy he seeks.

With respect, the defendants cannot show 'something special in the circumstances of the case' that would disentitle the plaintiff to the remedy of perpetual injunction. It was a simple case of a statutory violation of a statutory obligation. For instance, there was available evidence to show that the plaintiff had since 1987 when the defendant began expansion of the prayer site from a hut to a concrete structure advanced its objections by

letter addressed to the temple committee dated 24 March 1987. The defendants on their part by way of affidavit evidence in encl 14 alluded to the fact that the plaintiff had raised objections to the temple structures. It will be recalled that Mr Lee visited the temple site several times and informed that he wanted to utilise the same for cultivation and that he did not want worshippers to trespass and spoil the crops. When the defendants attempted to reconstruct the previous structures which were damaged and sinking in 1993, Mr Lee halted the contractor's works and workers from entering or bringing equipments into the estate. Mr Lee discuss the matters and requested Krishnan to see his solicitors. The defendants on their part categorically stated that from the time Mr Lee was the manager on or about the year 1990 he had asked Krishnan to demolish the temple. As a bare licensee the position of the defendants can best be described as weak. Terminable at will that bare licence was in fact terminated by the plaintiff through the objections advanced by Mr Lee, and through the various notices of evictions and this must necessarily include the notices dated 25 September 1995 (exh 'LTT 10' of encl 9) and 20 October 1997 (exh 'LTT 19' of encl 9). The notice dated 20 October 1997 came from Messrs Lam & Lim and it was addressed to the defendants in these words:

Date: 20 October 1997

The Office Bearers of
Persatuan Penganut Sri Sakthi
Migu Thurgaiamman Kuil
Batu 22, Jalan Kota Tinggi
Johor Bahru, Johor.

AR REGISTERED

Attn: Mr Suppiah a/l Andy Thavar
Mr Krishnan a/l Palanandy
Mr Machap a/l Veerapan

Dear Sir/s,

Re: Eviction Notice in Respect of Indian Temple on CT 618 Lot 2138, Mukim Kota Tinggi District of Kota Tinggi, Johor Darul Ta'zim

We refer to the above matter.

We act for M/S Ladang Tai Tak (KT) Sdn Bhd, the registered owners of the abovesaid property. We are instructed to state that you are occupying a portion of the above said property and constructed various structures and buildings including a temple known as The Sri Sakthi Migu Thurgaiamman temple illegally on it without any approved building plans from the relevant authorities.

As such, we are instructed to state, which we hereby do, that by reason of your non compliance with the requirements of the local authorities, your licence to occupy on the above said property is hereby revoked by the owner and you are required to vacate from the said property and deliver vacant possession of the said property to our client within one month of this letter that is on or before 17 November 1997 and reinstate the said property to its original state and condition without any structures thereon.

Take notice that in the event you do not deliver vacant possession of the said property on or before 17 November 1997, we have no alternative but to proceed with eviction and other proceedings against you without further notice for which you shall be liable for all consequential costs incurred thereon. You shall further be liable for any fines or penalties incurred by our client by reason of your illegal acts.

Yours faithfully,

Sgd (Illegible)

cc M/S Ladang Tai Tak (KT) Sdn Bhd,
Bt 21/22, Jalan Kota Tinggi,
81900 Kota Tinggi,
Johor Darul Ta'zim.

Pejabat Majlis Daerah Kota Tinggi,
Jalan Padang, 81900 Kota Tinggi,
Johor Darul Ta'zim.

Ahli Dewan Negeri Johor,
Kawasan Panti,
Pusat Khidmat Wakil Rakyat,
No 15, Jalan Biru, Taman Laksamana,
81900 Kota Tinggi, Johor Darul Ta'zim.

Clearly therefore the defendants by its actions in constructing and expanding the area of the prayer site had also breached the terms of the licence that may be implied. Consequently, in law the continued occupation of the plaintiff's land by the defendants can be construed as nothing less than trespassers. The case of *John Trenberth Ltd v National Westminster Bank Ltd,* (1979) 123 Sol Jo 388 would be another classic example of trespass. In that case the court ordered the removal of scaffolding and rubble and debris and further granted an injunction restraining the defendant from erecting any scaffolding or entering on the plaintiff's land.

At any rate, the balance of convenience in the present case lies in favour of the plaintiff as the loss and damages suffered by the plaintiff would certainly be irreparable.

Breach of the deed of settlement

That there was such a breach is beyond dispute. The defendants were obliged under cl 2 of the deed of settlement to deliver at their own costs and expenses vacant possession of the land to the plaintiff on or before 27 October 1995, yet the defendants with impunity breached that clause. In the light of that breach, the plaintiff's offer of an alternative site under cl 3 of the deed of settlement was revoked without the plaintiff being liable to the defendants for any claim or compensation whatsoever. The defendants' refusal to vacate rendered them liable to eviction proceedings and other actions which the plaintiff deemed fit to pursue and for which the defendants should bear all costs and expenses thereto including solicitor-client costs together with damages. As I said notices were transmitted to the defendants. By letter dated 4 May 1995 the defendants had agreed to move

A out of the land and again there was inaction on the part of the defendants. In my judgment, the defendants should be held to his bargain and be accountable for that bargain.

Bare denials

B The bare denials of the defendants at paras 16, 17, 18, 19 and 20 of the affidavit of the fifth defendant — Krishnan, in encl 14 to the allegations and averments of Mr Lee in paras 26 to 36 of his affidavit in encl 9 cannot carry any weight at all. Bare denials can never form the platform of a good defence.

C *Conclusion*

For the reasons adumbrated above, I granted the prayers as sought for in encl 10 particularly prayers 1, 2, 3, 4, 5, 6 and 7. The plaintiff need not give an undertaking as to damages. The plaintiff would also be entitled to costs and costs to be paid by the defendants to the plaintiff which must
D necessarily include solicitor-client costs.

Application allowed.

Reported by Zahid Taib

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